

# The Solicitors' Journal

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## CURRENT TOPICS

### Magistrates' Courts Committees

A MEETING of the Magistrates' Association on 26th March listened to addresses from the LORD CHANCELLOR, their President, and from Sir DAVID MAXWELL FYFE, Q.C., the Home Secretary, on the subject of the formation of the magistrates' courts committees, provision for which was made under the Justices of the Peace Act. Lord Simonds, referring to the scheme for the education and training of magistrates, said it was important that any such scheme should first be submitted to some central body by the magistrates' courts committees. The alteration of petty sessional divisions under the Act would give them the opportunity of carrying out many alterations which were obviously overdue. He added that it had been a matter of anxiety to find sufficient justices of the right age for juvenile courts. He would like to see one juvenile court panel covering several petty sessional divisions wherever practicable. Sir David Maxwell Fyfe said that the formation of the magistrates' courts committees was the first big change brought about by statute since 1914 in regard to the management of magistrates' courts.

### Costs to Persons Acquitted

THE LORD CHIEF JUSTICE made a statement in the Court of Criminal Appeal on 24th March to correct a misapprehension about the exercise of the power conferred by s. 44 of the Criminal Justice Act, 1948, to award the payment of costs out of local funds to a person who had been acquitted on his trial. He said that the misunderstanding might have arisen out of a circular being construed more rigidly than was intended. It was sent, after consultation with the judges of the King's Bench Division, to chairmen of quarter sessions and recorders in November, 1948. In it the judges approved a circular that had been sent out by the Home Office to the effect that costs under s. 44 should be awarded only in exceptional circumstances, and some instances of exceptional circumstances were given. But those instances were intended only as examples and not as a comprehensive list. His lordship said that while s. 44 in terms imposed no limit on the discretion of the court, it was never intended that costs should be awarded as of course to every defendant who was acquitted; that would be quite wrong. Its use should be reserved for exceptional cases, and every case should be considered by the court on its own merits.

### A Hope of Local Government Reform

"A HOPE and an ambition" was put forward in the Commons on 26th March by Mr. HAROLD MACMILLAN, Minister of Housing and Local Government, to present some measure of local government reform in the course of this Parliament. He made this statement during a debate on a private Bill to give county borough status to Ealing, but he gave no promise that the Government would be in a position to fulfil it. It appears, indeed, that the hope is distant, because he said that there would be no such measure in this

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year's legislative programme, and unless there was a substantial measure of agreement between the interests concerned, he saw no prospect of introducing it in 1953. Objection to it in some quarters was based on the impracticability of unilateral action in advance of comprehensive reform. Reform, as has been said over and over again for years past, is urgent, and not merely desirable. If the interests concerned have failed to agree over a long period in matters of vital national concern, it is for the Government to take the initiative and put forward its considered proposals as soon as possible.

#### A Barrister's Clerk

It is rare for a barrister's clerk to be the subject of a public tribute, and probably unique for such a tribute to be paid by an ex-Lord Chancellor. Such a tribute was accorded to the late Mr. RONALD POCOCK by VISCOUNT SIMON in *The Times* of 25th March. He wrote that for many years Mr. Pocock was the head clerk in chambers that he used to know so well, and at the end judge's clerk to Mr. Justice DONOVAN. "He was the ideal, but adroit, manager and supervisor of the mechanical side of an advocate's life, shrewd in organising the work, devoted to his employer's interests, courteous to clients, completely to be trusted, popular with everybody. And he had a power of judging when you would be 'wanted in court' which often seemed almost inspired. Best of all, my friend and helper had a character of kindness and a standard of upright dealing which make his memory a model for all who follow his difficult, and sometimes precarious, vocation." A barrister's clerk has often to be a diplomat, manager, secretary, accountant and treasurer. Many solicitors' managing clerks have similar combinations of many functions and Viscount Simon's grateful note about his late clerk will strike a sympathetic chord in the hearts of those solicitors who have enjoyed the priceless boon of employing such an admirable assistant.

#### Box or Stand?

IN an action at Lewes Assizes which was recently fully reported in the daily Press, Mr. Justice CROOM-JOHNSON corrected a witness who referred to the witness-box as "the stand." The witness had spent some years in the U.S.A., so that his slight lapse was not, it seems, due to assimilation of the language of the cinema. The American word "stand" is more appropriate than the word "box" to the elevated position and purpose of the piece of carpentry which witnesses occupy in English courts. Oddly enough it is not a strictly correct description of the place occupied by witnesses in American courts, if, as the films show, a chair is provided and there is no surrounding timber. The law, which always insists on accuracy of language, seems to have been guilty of a misdescription in both countries, and a fair exchange is called for. If ever the change is considered, possibly after a report by a Royal Commission, the peculiar appropriateness of the definitions of "stand" in the Oxford Dictionary should be put forward, viz., "stationary position, resistance to attack or compulsion, chosen standing ground, . . . pedestal or rack or the like, on or in which things may be placed." Meanwhile, those who prefer accuracy to tradition will have to be satisfied with the comforting maxim "*falsa demonstratio non nocet.*"

#### The Civil Estimates

THE Civil Estimates for 1952-53, Class III, Home Department, Law and Justice, published on 10th March (H.M.S.O., 4s. 6d.), show an increase of £9,000,000 over the previous year, the present figure being £77,040,977. The increase is in substance due to a £4,640,760 rise in expenditure on equipment and materials for civil defence and £3,500,000 for the police. In the civil defence estimate are included £83,000 for the requisition and maintenance of deep air-raid shelters and £70,000 for fire-boats. The estimate for respirators has risen from £1,452,000 to £3,149,000.

## PLANNING ENFORCEMENT NOTICES

BURGESS v. JARVIS AND THE SEVENOAKS R.D.C.

In an article at 95 SOL. J. 720, various tests to be applied to an enforcement notice under the Town and Country Planning Act, 1947, and the appropriate legal procedure for challenging a notice, were discussed.

One of these tests was:—

"Does the notice comply with the requirements of the Act as to its contents?"

The article stated that the contents required for a good and effective enforcement notice might be gathered from s. 23 (2) and (3) to be as follows:—

(a) A specification of the development complained of, or of the failure alleged in compliance with a condition on a planning permission.

(b) The steps which the recipient is required to take to put matters right.

(c) The period within which such steps are to be taken.

(d) The period, not being less than twenty-eight days after service of the notice, at the expiration of which the notice is to become effective.

The appropriate legal procedure to challenge a notice which failed to satisfy this test was stated to be not an appeal to the justices under s. 23 (4) of the Act, but (a) to bring an action for a declaration that the notice is invalid and an injunction to prevent the authority from proceeding on it, or (b) to defend proceedings under s. 24 (1) or (3), and (c) to

bring an action for trespass against an authority who have proceeded under s. 24 (1).

In many cases authorities have served notices specifying period (c) only with no separate reference to period (d) and the question has arisen: Does the notice by implication take effect at the end of period (c)? Hitherto it has not been possible to give a firm answer to this, though the point that such a notice is ineffective has been a good one to take by any of the means indicated. The Court of Appeal in *Burgess v. Jarvis and the Sevenoaks R.D.C.* [1952] 1 T.L.R. 580; 96 SOL. J. 194, have now clearly answered the question in the negative and declared such a notice to be invalid.

The principal judgment, delivered by Somervell, L.J., states in effect that the two periods must be separately specified in the notice and that the period within which the required steps are to be taken does not start until the other period has expired and the notice has taken effect.

Leave was granted to the Sevenoaks R.D.C. to appeal to the House of Lords, but any authority serving a notice in future will be well advised to pay regard to the decision, and the writer would suggest the specification of the periods in two separate clauses as follows:—

"(1) . . . hereby require you to take the steps set out in the . . . Schedule hereto within . . . weeks after this notice takes effect in accordance with the next succeeding clause and the statutory provisions mentioned therein."

"(2) Subject to the provisions of s. 24, subs. (3) and (4), of the above-mentioned Act this notice shall take effect at the expiration of weeks from its date [not less than twenty-eight days after its service, but as the date of service, e.g., where served by post or affixed to the premises, will not necessarily be known to the recipient, it is better to make the period run from the date of the notice, lengthening the period by a few days to allow for service]."

If the decision is upheld in all respects by the House of Lords, a very large number, if not the majority, of all enforcement notices served may be invalid. Various implications of the decision will be discussed in detail below, but, before coming on to these and the facts of the case, it will be as well to set out the more important of the statutory provisions concerned as follows :—

Section 23 (2) "Any notice . . . may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the conditions, as the case may be; and in particular any such notice may, for the purpose aforesaid, require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations."

Section 23 (3) "Subject to the provisions of the next following subsection, an enforcement notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein."

Then follow two provisos that "if within the period aforesaid" application is made for planning permission or an appeal is made to the justices, the notice "shall be of no effect" pending the final determination of the application or appeal.

Section 23 (4) provides that a person may appeal to the justices "at any time within the period mentioned in the last foregoing subsection."

Section 24 (1) provides that "If within the period specified in an enforcement notice, or within such extended period as the local planning authority may allow," the required steps, other than discontinuance of the use of land, have not been taken, the authority may enter and do the work. Section 24 (3) provides for the prosecution of any person who uses land in contravention of a notice; it makes no specific reference to any period.

The facts in the case were, briefly, that the Sevenoaks R.D.C. served on Jarvis an enforcement notice the only relevant wording of which was "Demolish the aforementioned sixteen houses and restore the land to its condition before the aforementioned operations took place within five years after the date of the service of this notice." Jarvis, with a view to complying with the notice, served notice to quit on Burgess, the tenant of one of the houses, who sought an injunction from Parker, J., to restrain Jarvis from demolishing the house. An injunction was granted in terms which would have postponed the demolition until at least the end of the five-year period. The validity of the enforcement notice was not in issue before Parker, J., but was only challenged on appeal, at which stage the district council were added as defendants.

The contention of the district council was that the words "take effect" in s. 23 (3) referred to the moment of time after which sanctions can be taken, which in this case was the expiration of five years.

Somervell, L.J., in the leading judgment gave various reasons why he considered the contention of the local authority

failed, and said : "The section requires two periods and, in particular, it requires the period to be specified at the expiration of which the notice is to take effect. It is at the end of that period, which is an uncertain date because of the possibility of an appeal, that the period, conveniently referred to as 'the period of compliance' should begin." The reasons leading up to this statement of the law were, briefly—

(1) that this was the plain meaning of the words of s. 23 ;

(2) that if the period referred to in subs. (2) of s. 23 and that referred to in subs. (3) of this section were one and the same, the twenty-eight days' qualification would appear in subs. (2) and not subs. (3) ;

(3) that if the two periods were the same the period would be referred to in subs. (3) by reference to subs. (2) ;

(4) that if the contention of the local authority was right, an anomalous state of affairs would be produced because, while the owner was required by the notice to demolish the house within the period, the occupier's right of appeal might be exercised right up to the end of the period when the house might be half demolished.

Denning, L.J., came to the same decision by slightly different reasoning. Thus he said : "Looking at the wording of the notice, it is clear that it took effect at some time before the expiration of five years, because the owner was required to act within that time. If the notice takes effect before the end of five years, when does it take effect? The only possible date is the date on which it is served . . . The result is, therefore, that this notice took effect at once. It did not allow the occupier the minimum of twenty-eight days before it took effect."

The decision of the court may be divided into two :—

(1) That the two periods must be separately specified.

(2) That the period for compliance does not start to run until the first, including any time occupied by determination of a planning application or appeal to the justices, has expired.

The first conclusion seems to the writer to be more easily arrived at than the second. The mere wording of subs. (3) itself seems to require that the notice should state when it takes effect, and the first conclusion by itself is sufficient to invalidate the Sevenoaks notice and very many others like it.

The second conclusion, which was not strictly necessary for the Sevenoaks decision and indeed does not seem to form part of the judgment of Denning, L.J., would invalidate many more. To take an example, a notice might have been served—

(1) requiring steps to be carried out within six weeks from its date, and

(2) stating that it took effect at the expiration of five weeks from its date.

Or the notice might specify not periods as such but dates, e.g., a notice served on 1st March requiring steps to be carried out not later than 1st May and stating that it should take effect on 1st April. Or, as a variant, a notice might specify five weeks in each case. Are these also invalid?

A notice worded in any of these ways could hardly be said to take effect on the date of its service when it expressly gives, say, five weeks in which to appeal. Again, the first notice clearly gives one week from the end of the period for applying for planning permission to carry out the work. Is the validity of this notice to depend on whether there is an application or appeal or not? If there is no application or appeal there would be a week for compliance after the notice took effect; if there was an application or appeal there would be no period of compliance after the notice took effect because its taking effect would be delayed, and in such

case is the notice valid or invalid or just useless to the authority, because in the result there is no period for compliance?

There is nothing in s. 23 (2) by itself which gives any indication that the period for compliance only starts from the date the notice takes effect and not from the date of the notice, and, on reading this subsection, one would certainly think that the period would run from the actual date of the notice. It seems arguable that this is so and that s. 23 (3) is simply intended to postpone for at least twenty-eight days, or until determination of any application or appeal, the right of the authority to initiate proceedings under s. 24.

On the other hand, the reasons advanced by Somervell, L.J., as given above and particularly the practical reason (4) seem conclusive for saying that the period for compliance starts at the time the other period under s. 23 (3) expires. Therefore, it is probable that a notice which specifies the two periods separately but which in fact makes them both of identical length so that they expire together, is invalid.

The position is not so clear where the notice gives a period for compliance expiring after the s. 23 (3) period specified in the notice has expired, but which is so worded as to make the period for compliance expire on a fixed date, not allowing for time which may be taken in determining a planning application or appeal to the justices. Here it may be argued that the notice does take effect as at the expiration of the s. 23 (3) period specified, the refusal or dismissal of any application or appeal which may have been made operating to lift a temporary suspension of the notice's taking effect. The notice, therefore, remains perfectly valid irrespective of the fact that the period of compliance has expired before final determination of the appeal or application. It may be said that this would cause hardship to the recipient of the notice, but this is met by the power given by a proviso to s. 23 (4) to the court, where it varies a notice or dismisses

an appeal, to direct that the notice shall not "come into force" for a period of up to twenty-eight days from the determination of the court. There would seem to be little point in this proviso if the period for compliance is not in any event to start running until the date of the court's determination. There is no similar power given to the Minister, where he dismisses an appeal from a refusal of a planning application, to postpone the coming into force of the notice, but he can, of course, if he thinks there will be hardship, grant a temporary permission.

It is interesting to compare the enforcement provisions in s. 13 of the Town and Country Planning Act, 1932, which have undoubtedly to some extent been used as a model for the 1947 Act provisions, though they are materially different in that they do not allow any period for compliance and thus avoid all the difficulties which spring from the two periods of the 1947 provisions.

To summarise—

(1) Local authorities in framing their notices should ensure that they specify the two periods separately in the manner suggested earlier in this article;

(2) Notices which—

(a) do not specify the two periods separately, or

(b) specify the two periods separately but so that they are identical in point of time or so that the period for compliance is shorter than the other period

are invalid and may be successfully challenged;

(3) Notices which specify the two periods separately but which are so worded as to result in the period for compliance expiring after the date given by the notice on which the notice is to take effect, but before final determination of any appeal or planning application, may or may not be invalid or useless, but there are certainly good grounds on the authority of Somervell, L.J., for challenging them.

R. N. D. H.

### A Conveyancer's Diary

## APPROPRIATION BY TRUSTEE TO HIMSELF

APART from the statutory power of appropriation conferred upon personal representatives, it has long been recognised that a trustee has power, in certain circumstances, to make an appropriation in satisfaction of his own beneficial interest in the trust premises. The authority usually cited for this proposition is *Re Richardson* [1896] 1 Ch. 512, in which it was held that two executors who were entitled to two-fifths of a residue between them could make a valid appropriation of certain securities, which after the appropriation rose in value, in satisfaction of their own shares in the residue without at the same time making a similar appropriation to the shares of the other beneficiaries. It is true that the *gravamen* of the charge against the executors in this case was that they should have allocated the securities which they had so appropriated in due proportions to the shares of all the beneficiaries, who would on this footing have all enjoyed the subsequent increase in the value of the securities; but the mere fact that it was never suggested that the executors had no power to make any appropriation in their own favour has since been accepted as authority for the view that such an appropriation is valid.

It may be noticed in passing that the Land Transfer Act, 1897, which by s. 4 gave personal representatives statutory power to appropriate any part of the residuary estate of a deceased in satisfaction of a legacy or share in such estate with the consent of the person entitled thereto, had not come into operation when *Re Richardson* was decided. But

the significant feature of this case, from the present point of view, was that the trust under which the appropriation was made was not a trust for sale, and the significance of this part of the case appears when the decision in *Re Beverly* [1901] 1 Ch. 681 is considered.

In that case the question was whether the plaintiffs, who were the personal representatives and trustees holding a residue upon trust for sale, could appropriate leaseholds forming part of the residue to answer the shares of those entitled under the trust for sale, and the arguments turned on whether the section of the Act of 1897 had or had not taken away an executor's power to appropriate leaseholds, if any such power had ever existed. In the light of later legislation this particular question has become academic but the judgment of Buckley, J. (as he then was) is important for the analysis which it contains of powers of the kind here under consideration. After pointing out that where, as in *Re Richardson*, there is no trust to convert but simply a gift of property amongst certain parties, appropriation would seem easy, since the parties were to have the property reconverted and all the executors had to do was to arrive at equality as best they could, he went on to examine the principle applicable to the case where there is a trust for conversion. Under a trust for conversion each person is of course entitled to money, and the principle applicable, in the learned judge's view, was this: where the trustee is directed to convert and to pay the beneficiaries money, it must be

competent for him to agree with the beneficiaries that he will sell the beneficiary the property against the money which otherwise he would have to pay to him ; but it is not necessary to go through the form of first converting the property and then giving the beneficiary the money, which the beneficiary may be desirous immediately to reinvest in the property which has been sold. The principle which authorises a trustee or personal representative (there is no difference from this point of view between the two functions) is thus a notional sale, and it is this principle which has been seized upon by the Inland Revenue Commissioners as justifying the exaction of *ad valorem* stamp duty on any appropriation, whether made in exercise of a non-statutory power, as here, or in exercise of the statutory power, as in *Jopling v. Commissioners of Inland Revenue* [1940] 2 K.B. 282.

But here we were up against the well-known rule that a trustee cannot sell trust property to himself, and the construction of this rule and the principle underlying *Re Beverly* leads inevitably to the conclusion that a trustee holding property on trust for sale cannot make a valid appropriation in satisfaction of his own share in the trust premises, because the notional sale of the appropriated property can be upset, or at any rate challenged, at any time by any other person interested in the trust premises. It is, indeed, a ludicrous conclusion that would make the validity of such an appropriation depend on the presence or absence of a purely administrative provision like a trust for sale, but I can see no answer to this difficulty in logic.

As a practical matter, the difficulty (if it is a real difficulty) does not often arise, since it is only in the course of examining the title to realty that the point is likely to emerge, and in the case of realty, the appropriation is likely to be made under the statutory power which, *pace Jopling's* case, is often accepted as a sort of curtain behind which it is not proper to pry. But it is an interesting question, nevertheless, and perhaps one day the courts will have to resolve it.

\* \* \* \* \*

A correspondent has written to ask me to clarify certain points which in his view arise out of my recent article on "Trustees' Power to Determine Questions" (p. 145, *ante*), based on *Re Wynn's Will Trusts* (reported at p. 120, *ante*). The points are that, first, the reference to *Re Wynn's Will Trusts* seems, in my correspondent's view, to imply that a provision in the will conferring power on the trustees to apportion blended funds is void, and secondly, if that be so, how this can be reconciled with the statutory power to apportion blended trust funds or property conferred by s. 15 of the Trustee Act, 1925. That section confers a number

of powers on trustees, some in continuation of similar powers contained in the Trustee Act, 1893, some new in 1925, and among the latter is the power to sever and apportion any blended trust funds. A trustee is authorised by that section, for any of the purposes thereof, to enter into arrangements, execute instruments, etc., "without being responsible for any loss occasioned by any act done by him in good faith."

I do not think that there is really any conflict between what I wrote and this statutory power, or any similarly-worded express power if such be found in any trust instruments, for the point that I wished to make in connection with *Re Wynn's Will Trusts* was not that such powers were themselves void, but that any attempt to oust the jurisdiction of the courts in their supervision of a trustee's exercise of such powers is void. That seems to me to be a very important distinction. The apportionment of trust funds is something which has to be done every day, and indeed the administration of any but the simplest trust would be impossible if trustees had no power, not only to apportion funds, but to do many of the other things specified in the clause which was declared, in *Re Wynn's Will Trusts*, to be of no effect for the purpose of conferring upon the trustees immunity from the supervision of the court. It is one thing to say to a trustee that he may do something, and quite another to bind the beneficiaries to accept what the trustee does as final.

The statutory power to apportion blended trust funds exempts the trustee from any responsibility for loss occasioned thereby by any act done by him in good faith, but a beneficiary may well have some legitimate ground for complaint as the result of an apportionment of trust funds even when there is no question of bad faith, or anything like it, on the part of a trustee. A trustee, for example, may accept a certain valuation of property in good faith. If the trustee had power to make an appropriation, based on that valuation, which would bind the beneficiary, that would be the end of the matter so far as the beneficiary is concerned ; but since powers like that are, as I suggested in my recent article, void, a dissatisfied beneficiary can ask the court to have another valuation made, if necessary by asking for a decree of administration or execution of the trust by the court ; but the very fact that a beneficiary has the right of recourse to the courts for purposes such as this will often make it unnecessary to push matters so far. The existence of this alternative right, and the power and willingness of the courts to punish a recalcitrant or unreasonable trustee by making him pay the costs of a beneficiary's application, are powerful weapons in the hands of beneficiaries of which, I think, they cannot now be deprived by clauses of the kind which was declared void in *Re Wynn's Will Trusts*.

"A B C"

### Landlord and Tenant Notebook

## CONTROL : REPAIRS OR IMPROVEMENT

THE decision in *Wates v. Rowland and Another* [1952] 1 T.L.R. 488 (C.A.) gives us useful guidance on the question what work will, for rent control purposes, constitute an improvement or a structural alteration as opposed to a repair.

The plaintiff landlord had, in compliance with statutory notices served under the public health legislation, laid concrete over an existing bed of concrete beneath a dwelling-house. Joists supporting the ground floor had lain upon that bed, and the work done raised the site (*sic*) by nine inches, filling in the cavity ; the plaintiff had further carried out consequential work required by the notice : the rebuilding of sleeper walls, re-fixing of joists and plates, the re-laying of

flooring, etc. The new floor was, in fact, a tiled one, though the old one had been a wooden one, but nothing turned on that. The reason for the notice was that a change in the water table of the surrounding district had caused water to seep through into the cavity between the concrete layer and the old wooden floor, so that the latter began to rot.

Having done this, the landlord sought to increase the rent by 8 per cent. of the cost of laying the nine-inch layer or slab of concrete ; he did not contend that the installation of the new floor entitled him to anything. The provision on which the claim was based is s. 2 (1) of the Increase of Rent, etc., Restrictions Act, 1920, which (as amended by the Rent, etc.,

Restrictions Act, 1939, s. 3, but leaving out an amendment introduced by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 7, extending its scope to fixtures and fittings) reads: "The amount by which the increased rent of a dwelling-house . . . may exceed the standard rent shall . . . be as follows, that is to say, (a) where the landlord has since the 2nd September, 1939, incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding 8 per cent. of the amount so expended: Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly." By subs. (5), "for the purposes of this section, the expression 'repairs' means any repairs required for the purpose of keeping premises in good and tenantable repair."

The county court judge considered two authorities: *Strood Estates Co., Ltd. v. Gregory* [1936] 2 K.B. 605 (C.A.), and *Rabbitt v. Grant* [1940] I.R. 323; in the latter, an Irish court held that expenditure on replacing an earth privy by a modern water closet, pursuant to a sanitary notice, was a repair though it may also have been an improvement and a structural alteration, and that the house was not being maintained in tenantable condition when it had but an earth closet. In *Wates v. Rowland*, Jenkins, L.J., considered this conclusion surprising, and while observing that the question was one which must turn very much on the facts of each particular case, suggested that the Irish court had overlooked the definition of "repairs," which deliberately distinguished "good and tenantable repair" work from any other repair work required to put premises into a condition fit for human habitation.

In *Strood Estates Co., Ltd. v. Gregory* the letting fell within the scope of the then Housing Act, 1925, s. 1, now s. 2 of the Housing Act, 1936, and the local chief sanitary inspector testified that the house had not been in all respects fit for habitation before the work done, the substitution of a modern and efficient sanitary system for an antiquated one which did not meet the local authority's requirements, had been carried out. The tenant contended that, the landlord having done no more than perform the obligation imported (see *Walker v. Hobbs* (1889), 23 Q.B.D. 458) into the contract of tenancy to keep the premises fit for habitation, the work was repair work. But the court found two fallacies in this argument: for one thing, if the landlord could establish that the house could not be made fit without reconstruction, he could give notice of intention to close. Then, the word "unnecessary" in s. 2 (1) (a) of the 1920 Act must be taken to mean "unnecessary" for the purpose for which the house was to be used, i.e., habitation; and to say that a landlord could impose an increase in respect of work necessary to make the house fit for habitation, but that work done to fulfil the Housing Act obligation was not improvement or structural alteration work within the Rent Acts, ignored the difference between an ordinary tenancy, which the landlord could determine, and a statutory tenancy. The Legislature cannot have intended that the increase it sanctioned in 1920 should not be recoverable by reason of the measure it passed in 1925.

I will make one or two comments on the above reasoning later. In *Wates v. Rowland*, the Court of Appeal spoke of it with approval, but I do not think that they can be said to apply its reasoning except in agreeing that "unnecessary" in the proviso meant unnecessary for the purpose of making

fit for habitation. The view they took was that the laying of the additional concrete was an improvement and a structural alteration, in that it provided the house with a better substratum and got rid of the disadvantage of a cavity beneath the floor into which, owing to changed conditions, water found its way.

Looked at from a different angle, this decision might be said to apply the definition or description of "repair" given by Buckley, L.J., in *Lurcott v. Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.): "restoration by renewal or replacement of subsidiary parts of a whole," without rejecting that suggested by Goddard, J., in *Bishop v. Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257, when he held that failure to remove a dead pigeon from a gutter constituted a breach of a landlord's covenant covering that gutter, "repair" meaning "make fit to perform its function."

But about the *Strood Estates* case it might be observed that the provisions in the Housing Act, 1925, relied upon are no longer law; under the Housing Acts, 1936 and 1949, however, a landlord can raise the question whether a house unfit for habitation (within or outside the imported obligation to repair limits) can be rendered fit at reasonable expense; but in neither case could or can the landlord take the initiative, as the judgment in the *Strood Estates* case appeared to suggest. And, on the second point taken in that judgment and with reference to its applicability to such circumstances as those of *Wates v. Rowland*, one may comment that, as was strikingly demonstrated by the Divisional Court case of *Salisbury Corporation v. Roles* (1948), 92 Sol. J. 618, there are considerable differences between the position of a landlord proceeded against under the Housing Acts and one ordered to "abate a nuisance" under the Public Health Act, 1936. The same disrepair may mean that a dwelling-house is both unfit for habitation, etc., and a nuisance and injurious to health; but the remedies available against the landlord differ. It is probable that the arms drill to which a budding sanitary inspector is subjected includes instruction in the use of both weapons, and that he is taught that a thrust by the Housing Act weapon can, unlike one by the Public Health Act weapon, be parried: the landlord can in the one case, but cannot in the other, submit the question whether reasonable expenditure can put things right to a court of law (see 92 Sol. J. 643). In *Wates v. Rowland* it was not suggested that these differences called for any distinction; and, subject to one final comment, it would seem that the issues decided in that case are to be decided with the assistance of dictionaries rather than by reference to other decisions.

But there is one point where a dictionary might prove inadequate. If one looked up the meanings of "necessary" and "improvement" in such a work, one might well conclude that the expression "necessary improvement" was self-contradictory. It is, indeed, not used in the Act; but is freely employed in the judgments in both the *Strood Estates* case and *Wates v. Rowland*. In the proviso to s. 2 (1) (a) of the 1920 Act it is expenditure, not improvement, that is characterised as "unnecessary," and at first sight one might think that the only object was to see that the landlord carried out the work economically. For the body of the subsection does not say "reasonable" expenditure. But when one considers that a court may disallow the whole of the increase, one is forced to the conclusion that both objects are served and the question whether an improvement was necessary can be raised, and may be approached in the same way as the question whether a structural alteration is necessary.

R. B.

## HERE AND THERE

### WHAT IS EDUCATION?

PEOPLE sometimes talk about education as though it were a solid palpable object, like a lump of cheese or a Christmas cake, which could be cut up into portions of suitable size and shape (fair shares for all) and handed out like the week's rations. But the truth is that education is not an object at all in the sense that dentistry, say, or gunnery, is an object. Given a sufficient supply of dentists and dental materials you could, I suppose, provide fair shares of dentistry for every member of the population. Similarly, given a sufficient supply of gunners and of the materials in which they work, you could distribute very evenly the practical blessings of the latest advances in the science of ballistics. But education, *per contra*, is not an object at all. It is a method, a technique, the art of teaching, and that art will as readily adapt itself to the content of even the most startling lesson as the post office will adapt itself to carrying your correspondence, indifferent whether it be a love letter, a threatening letter or a tailor's bill. Within his view of the subjects which seemed good and useful to him, Fagin was as much an educationalist as Dr. Arnold of Rugby. It is as much education to teach little boys to be atheists in a Soviet school as to teach them to say their prayers in a Church of England school. So before you applaud too enthusiastically any encouraging statistics relating to the spread of education it is well to ask for further and better particulars of what exactly is being taught and by whom.

### TRAMRIDE FOR TRAINED

Now, we all know that the basis of the Borstal system is training, presumably, *inter alia*, training in virtue and self-control. It is interesting, therefore, to speculate how far along the route towards this desirable *terminus ad quem* "A Streetcar Named Desire" may reasonably be expected to carry the youthful traveller. One might be tempted to suppose the question fanciful or academic but for the fact that it appears that an eighteen-year-old Borstal boy, duly accompanied by his escort, actually boarded that vehicle of contemporary culture and, perhaps a trifle over-stimulated by the experience, gave him the slip, presumably in search of the richer, fuller life so vividly and dramatically unfolded before him. Certainly on the face of it the sort of ride associated with that sort of streetcar would seem to be more nearly akin to the "rides" for which people are taken in the idiom of the American underworld than with any old-fashioned notion of being "on the right lines." If tramcars it must be, one would have been rather inclined first to try the effect of one of Emett's goblin fantasies as being somewhat less emotionally disturbing. The oddity of the incident not unnaturally produced a question in the House of Commons asking whether the Home Secretary would "investigate the mental and moral qualifications" of those charged with the administration of the institution. Sir David Maxwell Fyfe replied that selected senior Borstal boys were allowed the privilege of visiting a cinema or other place of entertainment with a member of the staff who was off duty. While conceding

that "the choice of film in this case may have been unfortunate," he did not feel that the incident called for any further action on his part nor that it was necessary for him to name the official who took the boy. At this point a member somewhat irrelevantly interjected, "A jolly good film," which, of course, puts in a nutshell (the breadth of vision indicated by the observation hardly requires more space than that) the whole fundamental difficulty of education, including Borstal training. Education means teaching what seems good to the teacher, and that which seems "jolly good" to one seems "sordid and degrading" to another—the member who originally raised the matter, for example. Incidentally, of course, it is a *non sequitur* to suggest that every "jolly good" film is a suitable vehicle for the regeneration of Borstal trainees, criminal lunatics or the inmates of penal institutions. The better the film technically, the more persuasive it might be to courses quite other than those in which it was desired to guide (let us coin a new piece of jargon in the modern manner) the "exhibitees."

### SENSE ABOUT BORSTAL

It is a pity when incidents like this tend to give the public a distorted notion of the idea behind Borstal institutions and approved schools, which has a good deal more sense and less softness than some of their more sentimental advocates would lead one to suppose. Last year there appeared in *The Times* an extremely well-balanced letter from a gentleman closely and responsibly associated with the problem of youthful delinquents. It is too long to quote in detail, but here are some of his observations: "We are much too fond of projecting into the young delinquent what we think he should think, instead of taking note of what he thinks in fact." "Punishment . . . is a thing we bring on ourselves . . . I should be quite prepared to say to someone, 'If you do not work, then clearly you cannot have the same privileges and diet as those who do.'" Of a persistent absconder whom he had put in confinement, a well-meaning visitor said: "You are quite wrong. The boy does not want locking up; he wants loving." To which he replied: "The second part of your statement is perfectly true, but I cannot love him in Doncaster! I need to have him here to love." Again: "Society has as much right to be protected as the criminal has to be 'understood,' and while we are always ready to try to see the point of view of the person who is . . . uncooperative . . . there is a limit to what the law-abiding public should be made to suffer in order that the individual may express his own views freely." "Affection and punishment are not mutually exclusive. Affection is our gift to one another; punishment is something we bring upon ourselves to the sorrow of those who are our friends." What could be more sensible than that? Yet, at about the same time, a laudatory article in an evening paper, in the brightest journalistic style, about the methods of this very same gentleman, made him sound not much more than an interesting educational eccentric. It struck a note all its own with the heading, "Bad Boy Gets the Best Bedroom."

RICHARD ROE.

## OBITUARY

### SIR ROBERT C. WITT

Sir Robert Clermont Witt, C.B.E., retired solicitor, formerly of Old Broad Street, London, E.C.2, died on 26th March, aged 80. He was admitted in 1898. An art connoisseur, he was one of the founders, and chairman until 1945, of the National Art Collections Fund, and was co-opted as a trustee of the National Gallery for various periods from 1916 to 1940 (he was chairman in 1930), as a trustee of the Tate Gallery from 1916 to 1931, and as chairman of the National Loan Collections Trust. The Witt Library of over half a million items was collected by him and thrown open to students and for research purposes. He was created C.B.E. in 1918 and knighted in 1922. Before becoming a solicitor he

served in the Matabele War and as war correspondent with Cecil Rhodes.

### MR. C. E. PETTIT

Mr. Charles Edward Pettit, solicitor, of Baker Street, London, W.1, died on 24th March, aged 77. He was admitted in 1896.

### MR. W. A. REID

Mr. William Allan Reid, retired solicitor, of Derby, has died at his home in Kensington at the age of 86. He was admitted in 1895, and was M.P. for the Borough of Derby for fourteen years.

## REVIEWS

**Clarke Hall and Morrison's Law Relating to Children and Young Persons.** Fourth Edition. By A. C. L.

MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts, and L. G. BANWELL, Chief Clerk of the Metropolitan Juvenile Courts. 1951. London: Butterworth & Co. (Publishers), Ltd. £3 15s. net.

The first edition of this book appeared soon after the passing of the Children and Young Persons Act, 1933, and the changes brought about by the Children Act, 1948, and various other statutes, have necessitated a new edition since the last in 1947. The notes to the Children Act, 1948, and the Nurseries and Child-Minders Regulation Act, 1948, have been compiled by Miss M. M. Wells, M.A., Barrister-at-Law, and Mrs. Joan Cole, B.Sc., a former children's officer, made a number of suggestions for improving the book from the point of view of local authorities before it went to press. Although the preface is dated 1st September, 1951, there has been time to incorporate the Guardianship and Maintenance of Infants Act, 1951, and it seems that the various other statutes and statutory instruments affecting the many subjects found in the book have all been incorporated or referred to. The book is divided into seven parts. The first deals with the Children and Young Persons Acts, 1933 and 1938, with school attendance, probation, Borstal and procedure generally in the juvenile courts; it also includes a note on mental defectives. The next two divisions are concerned with child care and protection. The wide scope of the subjects dealt with in these three divisions shows not only that the book is indispensable to magistrates' clerks, town clerks and children's officers, but also that it will be very valuable to prosecuting solicitors, chief constables and practitioners whose work takes them into the criminal courts at all frequently.

The next divisions deal with adoption, guardianship of infants, marriage of infants, legitimacy and family allowances. The general practitioner will find in these parts of the book very much of value to him and we can recommend the new edition without hesitation.

The statutes are set out in order, with copious notes and cross-references, and the statutory instruments, forms and some Home Office circulars are printed in full. The notes appear to contain all the relevant cases and we have found only one questionable statement in the work, viz., on p. 548, where it is stated that proceedings by infants for consent to marriage have now been assigned to the juvenile courts. No authority is given for that statement and we do not know where such authority is to be found.

In all, the fourth edition covers a great many subjects and the editors and their assistants are to be congratulated on the accuracy, completeness and arrangement of the book.

**Handbook of Child Law.** Being the Fourth Edition of "Handbook for School Attendance Officers." By JOHN STEVENSON, late Chief Superintendent of School Attendance Officers and Child Employment Inspectors of the Birmingham Education Authority, and LAURENCE HAGUE, Senior Administrative Assistant, formerly Superintendent of School Attendance Officers and Child Employment Inspectors, City of Birmingham Education Committee. 1952. London: Sir Isaac Pitman & Sons, Ltd. 40s. net.

This book now has 470 pages and, as can be surmised, deals with many subjects besides school attendance. The enactments dealing with child protection and welfare, to give a comprehensive title, are set out in detail, with annotations and a full index. The text refers to a large number of decisions, including some considered judgments of stipendiary magistrates, and though neither of the authors has legal qualifications, they can be congratulated on their full and accurate discussion of the relevant Acts. Solicitors who have worked for local authorities will not, however, be surprised at the learning displayed by Mr. Stevenson and Mr. Hague, for they will know how full a knowledge of the law relating to their own

special subjects is often shown by council inspectors and other officials.

The book will be found most valuable by solicitors for local authorities and children's officers. The general practitioner also will find in it as good a statement of the law relating to school attendance, cruelty to, and neglect of children and the employment of children as can be found in any text-book. "Care and protection" proceedings in the juvenile court, the powers of local authorities to take children into care and adoption are also dealt with.

The authors seem to have confused the *Justice of the Peace* newspaper with the Reports and have overlooked the fact that it is now the Marriage Act, 1949, which deals with applications by infants for consent to marry. Also, it seems a pity that they have omitted the Summary Jurisdiction (Children and Young Persons) Rules, 1933, as these have an important bearing on proceedings for "care and protection."

**Meetings of Private Companies.** Second Edition. By PETER E. WHITWORTH, B.A., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1951. London: Jordan & Sons, Ltd. 10s. 6d. net.

The average practitioner will require a book on the law of meetings which covers more than meetings of private companies, and for the same price as this book he can purchase "Crew." For those who do not, this book can be recommended as a sound text-book which, by dealing with private companies only, is of convenient length and simplicity. A number of precedents are included and these are in general satisfactory, although minor additions or changes appear desirable in some.

**"Special Reasons."** By W. E. BLAKE CARN, Solicitor, Clerk to the Justices for the City of Leicester. 1951. London: Shaw & Sons, Ltd. 6s. net.

In 1930 the Road Traffic Act directed the magistrates' courts, on convictions for the offence of using or permitting a vehicle to be driven uninsured and the offence of driving whilst under the influence of drink or drugs, to disqualify the offender for twelve months "unless the court for special reasons thinks fit to order otherwise."

For sixteen years the magistrates' courts happily applied this provision without benefit of advice from the Court of Criminal Appeal. After reading Mr. Carn's book and the strictures of the Lord Chief Justice contained therein, one shudders to think of the monstrosities of leniency which may have been perpetrated in the lower courts in the days before the meaning of the words "special reasons" was explained to them.

Let it be said at once that this is an extremely handy little book which places the gist of all reported cases on "special reasons" at once at the reader's finger tips. He will learn that it was in 1946 in *Whittall v. Kirby*, a case brought to the Court of Criminal Appeal in response to a direct invitation from the Lord Chief Justice, that the meaning now attached to the words "special reasons" was first announced as being "reasons special to the facts which constitute the offence and not reasons special to the offender."

We shall, of course, never know whether that was the meaning which Parliament had in mind when it enacted this particular provision, but Mr. Carn's book will enable us to weigh the fine distinctions between *Rennison v. Knowler* and *Labrum v. Williamson* and between *Jowett-Shooter v. Franklin* and *Hopper v. Stansfield*.

The Court of Criminal Appeal has really changed "special reasons" from a question of fact into a question of law—and highly technical law at that.

May we perhaps draw Mr. Carn's attention, not by way of criticism but purely by way of interest, to the case of *Coleman v. Friend*, described in 94 SOL. J. 41, which it is suggested splits the hair between *Rennison v. Knowler* and *Labrum v. Williamson*.

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## NOTES OF CASES

### HOUSE OF LORDS

#### **FACTORIES: DANGEROUS MACHINERY: INJURY FROM MACHINE MANUFACTURED FOR SALE**

**Parvin v. Morton Machine Co., Ltd.**

Lord Normand, Lord Reid, Lord Tucker, Lord Asquith of Bishopstone and Lord Cohen

6th March, 1952

Appeal from the Court of Session ([1950] S.C. 371).

The pursuer, an apprentice, received an injury in his employers' works while cleaning a machine, which they had manufactured for sale, and which did not form part of their works plant. He claimed damages for negligence at common law, and for breach of duty to fence under ss. 14 (1), 16 and 20 of the Factories Act, 1937, as a guard had been removed from the machine. The court held that the Act related only to machinery forming part of the employers' plant. The pursuer appealed. The Act provides by s. 14 (1) : "Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced . . ." By s. 16 : "All fencing or other safeguards provided in pursuance of the foregoing provisions . . . shall be . . . constantly maintained and kept in position while . . . in motion or in use . . ." By s. 20 : "A . . . young person . . . shall not clean any part of a prime mover or of any transmission machinery while . . . in motion and shall not clean any part of any machine if the cleaning thereof would expose the . . . young person to risk of injury from any moving part . . ."

LORD NORMAND said that there was no authority on the point whether the sections applied to products of the factory in question. Sections 12, 13 and 14 (1) must be considered together; the two former sections dealt with prime movers and transmission machinery, while s. 14 (1) dealt with "other" machinery. It was apparent from the language of ss. 12 and 13 that the prime movers and transmission machinery there dealt with were part of the factory plant; it followed that the "other" machinery in s. 14 (1) must also be part of the factory plant; the subsection was dealing with the whole of the remaining machinery installed, other than prime movers and transmissions. That being so, s. 16 could not apply, while s. 20 repeated the threefold division of ss. 12, 13 and 14. Accordingly, the sections relied on had no reference to the machine concerned, and the appeal failed.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES : F. W. Beney, Q.C., and John Wilson (of the Scottish Bar) (W. H. Thompson, for D. G. McGregor, W.S., Edinburgh, and Digby Brown & Co., Glasgow); R. H. Sherwood Calver, Q.C., and N. A. Sloan (both of the Scottish Bar) (Martin & Co., for Morton, Smart, Macdonald & Prosser, W.S., Edinburgh, and Biggart, Lumsden & Co., Glasgow).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

#### **TRADE UNION: ADMISSION TO TEMPORARY MEMBERSHIP: NO PROVISION IN THE RULES**

**Martin v. Scottish Transport and General Workers Union**

Lord Normand, Lord Reid, Lord Tucker, Lord Asquith of Bishopstone and Lord Cohen

6th March, 1952

Appeal from the Court of Session ([1951] S.C. 129).

In 1940 the pursuer, under protest, signed a form of application for membership of the defendant union, which provided that his membership should be "for the duration of the present war," and that the union would be entitled "to require me to forfeit my membership on or at any time after the signing of an armistice." The rules of the union contained no provisions for temporary membership. In 1948 the union, by resolution of the executive council, purported to determine the pursuer's membership. On his bringing an action against the union claiming a declaration that he was a continuing member and reduction of the resolution, judgment was given in his favour by the Lord Ordinary: this decision was recalled by the First Division, which held that he was admitted, if at all, on the basis of his application, as otherwise his admission was *ultra vires*, since the

rules did not provide for temporary membership. The pursuer appealed to the House of Lords.

LORD NORMAND said that the pursuer had contended that the union could not properly sustain a plea of *ultra vires* while it had power to alter its rules. That contention could not be sustained. The issue fell to be decided on the construction of the letter of application and of the rules of the union. On the terms of the letter he would not have been admitted unless the suspensive condition had formed an integral part of his application. It followed from s. 14 of the Trade Union Act, 1871, that terms of admission to membership of a union must be of universal application, unless special provisions were made by the rules of a particular union. Accordingly, it could not be said that any modification of the defender's rules could be implied so as to ratify the legality of the pursuer's admission. The purported admission was *ultra vires* the union, and the pursuer had never been a member.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES : T. P. M'Donald, Q.C., and N. A. Sloan (Smith and Hudson, for Thos. J. Addy, Son & Co., S.S.C., Edinburgh); James Walker, Q.C., and F. A. Duffy (H. O. Parsons, for Herbert McPherson, S.S.C., Edinburgh, and L. & L. Lawrence, Glasgow).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

### COURT OF APPEAL

#### **LANDLORD AND TENANT: STATUTORY RENEWAL OF LEASES OF SHOPS: REASONABLE RENTS**

**John Kay, Ltd. v. Kay**

Evershed, M.R., Jenkins and Hodson, L.J.J.  
29th February, 1952

Appeal from Norwich County Court.

The landlords were the owners of two shops let to the tenants, who were multiple grocers, on terms expiring in October, 1951, and January, 1952, at rents of £160 and £100 per annum. The tenants applied under the Leasehold Property (Temporary Provisions) Act, 1951, for the grant of new leases. The county court judge found that there was a firm offer for a twenty-one-year lease of the first shop at a rent of £750 per annum with a premium of £1,500, and that the market rent for a one-year term was £700, and that the market rent of the second shop was £520 per annum. He directed the grant of new leases at £550 and £400 respectively. The Act of 1951, which empowers the court to order the grant of new leases for shops where the existing leases are due to come to an end within two years of the date on which it came into force, provides by s. 12 (1) that "the court may, if in all the circumstances of the case it appears reasonable to do so, order that there shall be granted to the tenant a tenancy for such period, at such rent, and on such terms and conditions as the court in all the circumstances thinks reasonable . . ." By subs. (3) : "The court shall not order the grant of a new tenancy if it is satisfied . . . (e) that having regard to all the circumstances of the case greater hardship would be caused by ordering the grant of a new lease than by refusing to do so." The landlords appealed.

EVERSHED, M.R., said that the question was whether the rents directed by the judge were reasonable. The rent offered for the first shop might represent the market value of a lease, but that was not necessarily the reasonable rent; that might be found by applying the subjective test of what the judge thought right on the evidence; he might conclude that a reasonable rent was something between the old rent and the rent offered by the third parties. In the present case the judge had not misdirected himself in any material way; he was entitled to take into consideration the facts that the Act contemplated some temporary relief for tenants, and that the value of money had fallen. There was evidence which supported the contention that the market value was inflated by the extreme shortage of similar property. On the question of hardship under subs. (3), the onus was on the landlord; the reduction of rent from what was obtainable to what was reasonable was not a fact on which the landlord could rely so as to discharge that onus. There was no reason to disturb the decision below, and the appeal should be dismissed.

JENKINS and HODSON, L.J.J., agreed. Appeal dismissed.

APPEARANCES : Charles Lawson (Hardcastle Sanders and Armitage); J. Hamawi (Thornton, Lynne & Lawson).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

## QUEEN'S BENCH DIVISION

TRADING WITH THE ENEMY: INVOLUNTARY  
RESIDENCE IN ENEMY TERRITORY: POWERS OF  
SALE OF CUSTODIAN**Vamvakes v. Custodian of Enemy Property**

Ormerod, J. 27th February, 1952

## Action.

The plaintiff, who was a Greek, in 1937 arranged to deposit 3,000 sovereigns in a London bank. In 1939 he went to live in Bucharest for business reasons, in connection with supplies for the Greek army, and remained in Roumania until 1947. In January, 1941, the Iron Guard seized power, and the plaintiff's business came to an end in February. In April, Germany declared war on Greece, and the plaintiff was unable to leave Bucharest. On 15th February, 1941, Roumania was declared "enemy territory" under the Trading with the Enemy Act, 1939. In September, 1941, the bank notified the holding of sovereigns to the Custodian of Enemy Property, and an order under s. 7 (1) (b) of the Act of 1939 was made in May, 1942, vesting the sovereigns in him. In June, at the custodian's direction, the bank sold the gold to the Bank of England (the second defendants) and paid the proceeds to the custodian. After the war the plaintiff applied to the custodian for the release of his assets, and his account was credited with the proceeds of sale of the sovereigns and with his former bank balance, less fees. In the action he claimed the return of the sovereigns or their value, or damages for conversion, alleging that he was not an enemy and that the sovereigns were not enemy property within the meaning of the Act, and that the Board of Trade had no power under s. 7 (1) (b) to order a sale. By s. 2 of the Act, an "enemy" is defined as "any individual resident in enemy territory." By s. 7 (1) "... the Board of Trade may . . . (b) Vest in the . . . custodian such enemy property as may be prescribed . . . (c) Vest in the custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian; (d) Confer and impose on the custodian . . . such rights, powers, duties and liabilities as may be prescribed as respects [property referred to in (b) and (c)] . . . and any such order may contain such incidental and supplementary provisions as appear to the Board of Trade to be necessary or expedient for the purposes of the order."

ORMEROD, J., said that the plaintiff had contended that to fall within the mischief of s. 2 he must have been voluntarily resident in enemy territory. The authorities showed that for common-law purposes voluntary residence was required to constitute an individual an "enemy," but those purposes were mainly concerned with the right to sue; in questions affecting the administration of property the consideration was to safeguard the property from being used for hostile purposes; he would accept the view expressed in *In re Hatch* [1948] Ch. 592 that residence for this purpose meant "*de facto* residence irrespective of circumstances." It was further contended that the Board of Trade had no power to order a sale when assets were vested in the custodian under s. 7 (1) (b), as (b) and (c) were mutually

exclusive and (d) did not enlarge the powers under either paragraph; and it was said that the reason for that limitation was that *In re Munster* [1920] 1 Ch. 268 laid down that under a vesting order the beneficial interest in enemy property was suspended; but on a true reading of that case the power of sale was not suspended, and the proceeds of sale remained in the custodian's hands under the same conditions as the original asset. The express power of sale in para. (c) was given so that a sale could be made if it was impractical to vest the property in the custodian, and it did not exclude a power of sale under (b) in conjunction with (d). Judgment for the defendants.

APPEARANCES: K. Diplock, Q.C., and G. Dare (L. Fior); J. P. Ashworth and R. J. Parker (Solicitor, Board of Trade); J. Harcourt Barrington (Freshfields).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: PAYMENTS UNDER FOREIGN  
CONTRACT TO DIVORCED WIFE RESIDENT ABROAD:  
DEDUCTION OF INCOME TAX NOT ALLOWED**Keiner v. Keiner**

Donovan, J. 27th February, 1952

## Action.

In 1939, in contemplation of divorce proceedings, a husband, ordinarily resident in England, executed a deed in New Jersey, to make annual payments to his wife, who was ordinarily resident in New Jersey. Shortly afterwards the marriage was dissolved by the Court of New Jersey. Payments having fallen into arrear, the wife sued the husband in the King's Bench Division, and obtained an order by consent for £6,000, payable as to £2,000 at once and as to £4,000 within sixty days. The husband purported to satisfy this judgment by cheques for £2,000 and £1,245, together with certificates of deduction of income tax in respect of the balance of £2,755, representing tax due on the whole sum of £6,000. Tender of the second cheque having been refused, the husband brought this action claiming that the former judgment had been satisfied by the tender made, and relied on the Income Tax Acts in general, and on rules 19 and 21 in the Schedules to the Act of 1918 in particular.

DONOVAN, J., said that, on the facts, the law applicable was that of New Jersey; that conclusion was not displaced by the fact that the wife had sued in England; presumably she had done so because the husband was resident there. The husband could not reduce his monetary liability to the wife under American law by putting forward reductions of the amount due, based on English income tax law. The question was not as to what the position was as between the husband and the Revenue in England, but what the rights of the parties were *inter se* under the deed; that question was governed by the law of New Jersey. The case was really the converse of *Indian and General Investment Trust, Ltd. v. Borax Consolidated, Ltd.* [1920] 1 K.B. 539. The action therefore failed.

Judgment for the defendant.

APPEARANCES: N. E. Mustoe (Wood & Sons); R. Borneman (J. M. Isaacs).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

## SURVEY OF THE WEEK

## ROYAL ASSENT

The following Bills received the Royal Assent on 27th March:—

## Consolidated Fund.

To apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March, one thousand nine hundred and fifty-two and one thousand nine hundred and fifty-three.

## Diplomatic Immunities (Commonwealth Countries and Republic of Ireland).

## Industrial and Provident Societies.

## HOUSE OF LORDS

## A. PROGRESS OF BILLS

Read First Time:—

**Agriculture (Poisonous Substances) Bill [H.L.]**

[25th March.]

To provide for the protection of employees against the risk of poisoning by certain substances used in agriculture.

## Cinematograph Film Production (Special Loans) Bill [H.C.]

[25th March.]

## Export Guarantees Bill [H.C.]

[25th March.]

## Miners' Welfare Bill [H.C.]

[25th March.]

## Prison Bill [H.L.]

[27th March.]

To consolidate certain enactments relating to prisons and other institutions for offenders and related matters with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.

Read Second Time:—

**Metropolitan Police (Borrowing Powers) Bill [H.C.]**

[25th March.]

Read Third Time:—

**Dentists Bill [H.L.]**

[25th March.]

## Tyne Improvement Bill [H.L.]

[27th March.]

## B. DEBATES

LORD STRABOLGI moved to resolve that the House viewed with concern the continued number of cases before the courts of

gross cruelty to children and would support any practical measures to bring about a diminution of such cases. Before the recent war the average number of convictions in England had been 800 to 900 every year. During the war there had been a sharp rise to 1,300 to 1,400. The last year of the war had been the worst in modern times with 1,725 convictions for serious offences against young children. There had been a diminution since then, but last year the figures were 1,019 persons dealt with by magistrates and 25 by judge and jury. It might be said that more prosecutions were being brought, but the figures did not bear this out. Only a small proportion of the cases known to the N.S.P.C.C., the Church Army, the Salvation Army, the police, clergy, doctors, school teachers and others reached the courts. The rest were dealt with by warning and advice. To these had to be added those cases not known to anyone or known to neighbours who were too timid or indifferent to report the matter. The problem was thus a serious one.

With regard to the cases of deliberate cruelty he could not help feeling that there was some ground for criticising certain magistrates for dealing with them too lightly. He did not want to make a sweeping attack on the magistrates but it did appear that here and there the sentences were unduly light—unless there was something in the cases which did not appear from the reports. There were some objections to the suggestion that such cases should be taken on indictment, although the N.S.P.C.C. were proposing to do this. There were inevitable delays. His own suggestion was that the N.S.P.C.C. should be strengthened and subsidised. There were only 270 full-time inspectors, mostly ex-petty officers and ex-N.C.O.'s, and 50,000 honorary voluntary workers. The Salvation Army ran one home for teaching neglectful mothers the elements of the duties of wife and mother, but there was a need for many more.

EARL WINTERTON said that, superficially at any rate, the public and some magistrates had at one time seemed to regard cruelty to animals as a more grave offence than cruelty to children. The revenue enjoyed by the societies protecting animals was vastly greater than that enjoyed by the N.S.P.C.C., which was coming to the end of its resources. Nevertheless, he could not support the suggestion of a subsidy. What was needed was more members and more donations. He thought there was great inconsistency in the penalties meted out in magistrates' courts.

LORD MESTON thought that N.S.P.C.C. inspectors should be given legal powers of entry to homes in which cruelty was suspected. VISCOUNT ST. DAVIDS expressed the view that fines for cruelty were inappropriate. In that type of case the cruelty was usually due merely to ignorance, and what was needed was a course of treatment either voluntarily undertaken or in prison. The BISHOP OF IPSWICH said he had investigated a case where a £10 fine had been imposed and had come to the conclusion that the magistrates had been quite right in assessing the penalty. His view was that the magistrates who had the full facts before them and full knowledge of all the circumstances were far better fitted to deliver the right judgment than those whose sole information was derived from the necessarily inadequate and incomplete Press accounts. Merely increasing the penalty was very unlikely to reduce the evil. More institutions for training neglectful parents were needed. He was afraid that caution had to be used in encouraging the reporting of cases. He had been told by a solicitor of a boy of eight or nine who, after being chastised by his father with a slipper had said : " I shall report you to the inspector to-morrow."

EARL JOWITT said he did not think this was primarily a question of punishment at all. There was already a power to punish heavily the really brutal cases. Sometimes the magistrates erred, but by and large they did their job remarkably well. The emphasis should be on the educational side. Under the Children Act, 1948, the Secretary of State could make grants to voluntary societies, as also could local authorities with his consent. Perhaps these powers could be used to assist the N.S.P.C.C.

LORD GODDARD said there was a danger of this matter being exaggerated. If one looked at the children of to-day, could one believe that cruelty had really increased since the time when Dickens wrote " Oliver Twist "? There were still, however, some cases of deliberate brutality and admittedly there were cases where the penalties had been inadequate, but he was of the opinion that the law as it stood was perfectly adequate. What was needed was a further application of the law, and the impressing upon magistrates from time to time of the fact that they ought not to deal with cases summarily merely because they had the power to deal with them that way. This principle, moreover, did not apply only to cruelty cases. It was, however,

not unnatural that magistrates, when asked by the police or a reputable society to deal with a case summarily, should comply with the request. But he was quite certain that a large proportion of the cases now dealt with summarily ought to be sent for trial. Furthermore, he could not understand why so many cases were brought under the Children Act, but even so, these cases could be sent for trial. He agreed with the need for education and was glad to hear that the Prison Commissioners were trying to arrange for mothercraft classes to be given in prison. Very often neglectful mothers had been more sinned against than sinning and had had to contend with terrible difficulties.

The LORD CHANCELLOR said that in 1900 there were 3,226 convictions for cruelty and neglect, and in 1920 there were 1,533. The war had reversed the gradual improvement, but the increase in this type of offence was small in comparison with the increases in other crimes of violence. Nevertheless, there was no ground for complacency. He wished to thank the Lord Chief Justice for his great efforts, at considerable personal inconvenience, to educate magistrates up and down the country in their duties. He understood that it was now the official Home Office view that suitable cases should be taken on indictment. He could not lend support to the proposition that inspectors of the N.S.P.C.C. should have right of entry to homes, though he fully recognised the wonderful work done by the society. Nor could the Government agree to a direct grant to the society, but where a local authority made such a grant 50 per cent. of it came from the Exchequer. It lay with the local authorities to decide.

[25th March.]

## HOUSE OF COMMONS

### A. PROGRESS OF BILLS

Read First Time :—

#### Housing Bill [H.C.]

[26th March.]

To increase the amounts of the annual exchequer, rate fund and county council contributions under the Housing (Financial and Miscellaneous Provisions) Act, 1946; to enable contributions under section three of the Housing (Financial Provisions) Act, 1938, to be made in respect of houses occupied under contracts of service by members of the agricultural population, and to amend section twenty-three of the Housing Act, 1949, in relation to dwellings so occupied; to amend section seventy-nine of the Housing Act, 1936, in relation to sales and leases of houses by local authorities; and for purposes connected with the matters aforesaid.

#### Housing (Scotland) Bill [H.C.]

[28th March.]

To make fresh provision for the making of contributions out of the Exchequer and by local authorities in respect of housing accommodation provided in Scotland; to amend the provisions of the Housing (Scotland) Act, 1950, relating to the conditions applying to dwellings in respect of which improvement grants have been made and to the recording in the register of sasines of notices with respect to such dwellings, to the payments to be made by a local authority into the housing repairs account, and to the making of certain orders; and for purposes connected with the matters aforesaid.

Read Second Time :—

#### Army and Air Force (Annual) Bill [H.C.]

[27th March.]

To provide, during twelve months, for the discipline and regulation of the Army and the Air Force and to amend certain enactments relating to the Armed Forces of the Crown.

#### National Health Service Bill [H.C.]

[27th March.]

### B. QUESTIONS

#### PUBLIC AUTHORITIES PROTECTION ACT

Mr. THOMAS PRICE asked the Attorney-General whether he was aware that the general privileges conferred on public authorities by the Public Authorities Protection Act could not be justified in present-day circumstances, particularly where claims for damages arose from running-down accidents covered by policies of insurance, and if he would introduce amending legislation to remedy this. Sir LIONEL HEALD said he could not hold out any hope of early legislation on this subject, which was by no means free from difficulty.

[24th March.]

#### INTOXICATED MOTORISTS (PROCEDURE, METROPOLITAN POLICE)

Mr. USBORNE asked what instructions had been given to the Metropolitan Police as to their action in cases where a person, having left his car in the street, became intoxicated and decided

to walk home; and whether in such cases it was still the practice for the police to arrest him for being drunk in charge. Sir HUGH LUCAS-TOOTH said that police action under s. 15 of the Road Traffic Act, 1930, in regard to the arrest and prosecution of persons for being in charge of vehicles whilst under the influence of drink, must depend on the circumstances of each individual case. The Home Secretary had no power to give instructions to the Metropolitan Police as to their action in the circumstances described in the question and he was informed by the Commissioner of Police that no such instructions had in fact been issued.

[24th March.]

#### OUTDOOR ADVERTISING REGULATIONS (APPEALS)

Mr. HAROLD MACMILLAN stated that 558 appeals made under s. 31 of the Town and Country Planning Act, 1947, were dismissed in the twelve months ended 31st December, 1951. A hundred and fifty-one such appeals were allowed, making a total of 709.

[25th March.]

#### DEFENCE REGULATION 68CA

Mr. MARPLES stated that consultations had been going on with the local authority associations as to whether Defence Regulation 68CA should be allowed to lapse at the end of the year, or whether, in view of its overlap with planning powers, it should be revoked right away. The Minister could not agree with the view of some of the associations that revocation of the regulation would involve the loss of a considerable amount of housing accommodation, since local planning authorities had ample power to prevent that. Nevertheless the Minister had decided against immediate revocation.

[25th March.]

#### ROYAL COMMISSION ON CAPITAL PUNISHMENT

Asked by Mr. HECTOR HUGHES whether he would recommend an alteration in the terms of reference of the Royal Commission on Capital Punishment which would enable it to publish an interim report or reports, Sir DAVID MAXWELL-FYFE said that the terms of reference expressly provided that the Royal Commission or any four or more of its members could report from time to time if they considered it expedient so to do. He understood that the Royal Commission hoped to present its report this summer.

[27th March.]

#### BOOKS (CENSORSHIP)

Mr. S. S. AWBERY asked the Home Secretary if he would, in view of the large quantities of pernicious literature now being displayed for sale, take steps to set up a censorship for these kinds of books, in order to remove from the magistrates' courts the responsibility for deciding whether a book was obscene and unfit for general sale. Was he aware of the present danger of cases coming before a magistrates' court where two different sets of magistrates came to different decisions on the same kind of book? In reply, Sir DAVID MAXWELL-FYFE said he hoped the House would agree that, in order to be effective, censorship had to be authoritarian—that was, not open to challenge—and in this country that was abhorrent. It was a dangerous institution which might be misused, and it was a clumsy and wasteful arrangement which was notoriously difficult to operate. He thought the present system was effective to deal with the problem. Any citizen could institute a prosecution in England or Wales where he believed a publication was obscene and detrimental to morals.

[27th March.]

#### QUARTER SESSIONS APPEAL COMMITTEES (WOMEN MAGISTRATES)

Mr. BARNETT JANNER asked the Home Secretary whether he would introduce legislation to ensure that on any appeals committee dealing with cases coming from the juvenile courts at least one of the magistrates should be a woman. If the Home Secretary considered it essential that there should be a woman sitting in a juvenile court, would he explain why it was not equally essential that a woman should be sitting when a case from the juvenile courts was submitted to an appeals committee? Sir DAVID MAXWELL-FYFE said that quarter sessions were required, in appointing members of appeal courts, to include, so far as practicable, justices specially qualified for dealing with juvenile cases, and he was sure that they could be relied upon to use a wise discretion in this matter. He had made some inquiries to ascertain whether women were in fact appointed to appeal committees and he understood that the year books of quarter sessions in thirteen counties showed that all the appeal committees had women members. The average ratio of women to men was one to three. He did not think the matter was suitable for legislation.

[27th March.]

#### CRUELTY (PENALTIES)

Asked by Lieut.-Col. Sir THOMAS MORE whether, in view of recent trials at the Old Bailey for cruelty, he would consider amending the Criminal Justice Act so as to restore to the courts the right to impose corporal punishment in such cases, the HOME SECRETARY said this class of offence was not one of the limited group of offences for which corporal punishment could be imposed before its abolition as a judicial penalty by the Criminal Justice Act. The question of restoration did not, therefore, arise. The Lord Chief Justice had approved of the suggestion which he (the Home Secretary) had put to the House, which was that those who were prosecuting should consider, in serious and deliberately cruel cases of ill-treatment, using the Offences against the Person Act. It was only three months since he had suggested that greater use might be made of trial on indictment and he thought it ought to be given a trial. He would welcome any suggestions for improving the machinery set up by his predecessor with regard to children's officers and local authorities.

[27th March.]

#### FOOTBALL MATCH TICKETS (TOUTING AND TRADING)

The HOME SECRETARY said that any legislative prohibition on the sale of football match tickets at an enhanced price to a willing buyer would be almost impossible to enforce. Where such toutling amounted to a nuisance there were already powers to deal with it under the Police Clauses Act.

[27th March.]

#### CRIMES OF VIOLENCE (CORPORAL PUNISHMENT)

Asked by Mr. CROUCH to consider reintroducing corporal punishment for crimes of violence, the HOME SECRETARY said that the arguments for and against corporal punishment had been exhaustively considered by the Departmental Committee which reported in 1938 and were fully debated in the Criminal Justice Bill, 1948. The number of crimes of violence for which corporal punishment could be awarded before 1948 had varied little over the years 1947 to 1951. This did not support the contention that reconsideration of this controversial question was urgently required.

[27th March.]

#### SUPERVISION ORDERS AND DISPOSSESSION ORDERS

Sir THOMAS DUGDALE stated that 344 supervision orders were in force on 29th February, 1952, on the grounds of bad estate management of agricultural land. Nine certificates under s. 16 of the Agriculture Act, 1947, had been issued in 1951 for bad estate management and the compulsory purchase of the land was proceeding.

[27th March.]

#### LEGAL AID AND ADVICE ACT, 1949

The ATTORNEY-GENERAL stated that, as the extra expense involved in implementing s. 7 of the Legal Aid and Advice Act, 1949, was not considered to be justified in the present economic condition of the country, he regretted that he was unable to say when it would be possible to bring the section into force.

[27th March.]

#### STATUTORY INSTRUMENTS

**Adoption of Children (Summary Jurisdiction) Rules, 1952.**  
(S.I. 1952 No. 554 (L.4.) 6d.

These rules, *inter alia*, enable a magistrates' court to entertain a second application for an adoption order by the same applicant in respect of the same infant, although there had been no substantial change in the circumstances, if the case had not been dismissed on the merits at the first hearing.

**Bridgwater (Extension) Order, 1952.** (S.I. 1952 No. 590.) 8d.

**Bristol Waterworks Order, 1952.** (S.I. 1952 No. 622.) 6d.

**British Nationality Regulations, 1952.** (S.I. 1952 No. 582.) 5d.

**Cereal Fillers (Amendment) Order, 1952.** (S.I. 1952 No. 568.)

**Chippingham (Extension) Order, 1952.** (S.I. 1952 No. 587.) 8d.

**County of Northampton (Electoral Divisions) Order, 1952.**

(S.I. 1952 No. 576.) 5d.

**East Suffolk and Ipswich (Alteration of Boundaries) Order, 1952.**

(S.I. 1952 No. 577.) 8d.

**East of Birmingham-Birkenhead Trunk Road (Tushingham Bridge Diversion) Order, 1952.** (S.I. 1952 No. 593.)

**Electricity (Transmission Lines, England and Wales) (Transfer) Order, 1952.** (S.I. 1952 No. 595.) 8d.

**Electricity (Transmission Lines, Scotland) (Transfer) Order, 1952.** (S.I. 1952 No. 596.) 6d.

**Fire Services (Transfer of Pension Assets) (Police, Firemen) Regulations, 1952.** (S.I. 1952 No. 607.) 5d.

- Fylde Water Order, 1952. (S.I. 1952 No. 631.)  
**Hill Sheep** Subsidy Payment (England and Wales) Order, 1952.  
 (S.I. 1952 No. 574.)  
**Hill Sheep** Subsidy Payment (Northern Ireland) Order, 1952.  
 (S.I. 1952 No. 575.)  
**Importation** of Raw Cherries (Scotland) Order, 1952. (S.I. 1952 No. 569 (S. 21).) 6d.  
**Inverness** Corporation Water Order, 1952. (S.I. 1952 No. 566 (S. 19).)  
**Ironstone** Restoration Fund (Contributions) (Rate of Interest) Order, 1952. (S.I. 1952 No. 581.)  
**Ironstone** Restoration Fund (General) Regulations, 1952. (S.I. 1952 No. 547.) 5d.  
**Local Government** (Members' Allowances) Amendment Regulations, 1952. (S.I. 1952 No. 535.)  
**Marriages Validity** (Great Homer Street Methodist Chapel, Everton) Order, 1952. (S.I. 1952 No. 615.)  
**Marriages Validity** (Haddasiah Restaurant, Corporation Street, Manchester) Order, 1952. (S.I. 1952 No. 618.)  
**Marriages Validity** (Holy Trinity Parish Church, Aldershot) Order, 1952. (S.I. 1952 No. 619.)  
**Marriages Validity** (Magdalene Road Congregational Church, Norwich) Order, 1952. (S.I. 1952 No. 617.)  
**Marriages Validity** (Roman Catholic Church of St. Barnabas, Nottingham) Order, 1952. (S.I. 1952 No. 616.)  
**Marriages Validity** (St. Paul's Mission Church, Vange) Order, 1952. (S.I. 1952 No. 620.)  
**Milk** (Special Designations) (Specified Areas) (Scotland) Order, 1952. (S.I. 1952 No. 609.)  
**National Health Service** (General Medical and Pharmaceutical Services) (Scotland) Amendment Regulations, 1952. (S.I. 1952 No. 572 (S. 22).)  
**North of Scotland** (Hydro-Electric Board) (Constructional Scheme No. 62) Confirmation Order, 1952. (S.I. 1952 No. 578 (S. 23).)  
**Oxford** Water Order, 1952. (S.I. 1952 No. 561.) 5d.  
**Poultry and Hatching Eggs** (Importation) (Amendment) Order, 1952. (S.I. 1952 No. 586.)  
**Preston** (Extension) Order, 1952. (S.I. 1952 No. 589.) 11d.  
**Prison** (Scotland) Rules, 1952. (S.I. 1952 No. 565 (S. 18).) 1s. 5d.
- Public Rights of Way** (Applications to Quarter Sessions) Regulations, 1952. (S.I. 1952 No. 559.) 5d.  
 These regulations provide for the hearing by quarter sessions, under s. 31 of the National Parks and Access to the Countryside Act, 1949, of disputes concerning footpaths and rights of way shown on plans produced by local authorities in accordance with that Act.  
**Remuneration** of Teachers Amending Order, 1952. (S.I. 1952 No. 627.)  
**Remuneration** of Teachers (Farm Institutes) Amending Order, 1952. (S.I. 1952 No. 628.)  
**Stamped or Pressed Metal-Wares** Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1952. (S.I. 1952 No. 608.) 5d.  
**Stockport** (Extension) Order, 1952. (S.I. 1952 No. 588.) 8d.  
**Stopping up of Highways** (Bedfordshire) (No. 1) Order, 1952. (S.I. 1952 No. 592.)  
**Stopping up of Highways** (Glamorgan) (No. 3) Order, 1952. (S.I. 1952 No. 583.)  
**Stopping up of Highways** (Lancashire) (No. 1) Order, 1952. (S.I. 1952 No. 614.)  
**Stopping up of Highways** (Plymouth) (No. 1) Order, 1952. (S.I. 1952 No. 584.)  
**Stopping up of Highways** (Wigtownshire) (No. 1) Order, 1952. (S.I. 1952 No. 594.)  
**Superannuation** Rules for Teachers (Scotland), 1952. (S.I. 1952 No. 567 (S. 20).) 8d.  
**Temporary Workers** in Agriculture (Minimum Wages) (Scotland) Order, 1952. (S.I. 1952 No. 626 (S. 24).)  
**Women's and Maids' Nylon Stockings** (Distributors' Maximum Prices) Order, 1952. (S.I. 1952 No. 571.) 5d.  
**Yorkshire Ouse** River Board (Alteration of Boundaries of the Lower Swale Internal Drainage District) Order, 1952 (S.I. 1952 No. 555), and **Yorkshire Ouse** River Board (Alteration of Boundaries of the Lower Swale Internal Drainage District) (Appointed Day) Order, 1952 (S.I. 1952 No. 556). [Printed together as one document.] 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

## POINTS IN PRACTICE

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### Settled Land—APPOINTMENT OF NEW TRUSTEE BEFORE EXECUTION OF VESTING INSTRUMENT—VALIDITY

*Q.* A died on 25th January, 1941, having appointed B the sole executor and trustee "of this my will and trustee for the purposes of the Settled Land Act, 1925." A then proceeded to give to D Whiteacre for her life with remainder to D's children absolutely. The will was proved on 28th March, 1941, and on 31st March, 1941, a deed of appointment, after reciting the will and appointment of executor and trustee, death and probate, and setting out the property then subject to the trusts of the will, appointed C "to be a trustee of the will of A and to act jointly with B in the trusts of the same or such of them as are still subsisting and capable of taking effect." On 25th July, 1941, B executed a vesting assent purporting to vest Whiteacre in D. To this deed C was not a party. In view of the appointment of 31st March, 1941, the purported vesting deed of 25th July, 1941, appears to us to be a nullity, as C as well as B should have been a party thereto. It appears to us that the legal estate in Whiteacre is probably still vested in B and C by virtue of the appointment of 31st March, 1941, and the implied vesting under s. 40 of the Trustee Act, 1925.

*A.* In our opinion the vesting deed of 25th July, 1941, was in order, but we are very doubtful if the deed of appointment of 31st March, 1941, was effective to appoint C an additional trustee of the settlement for the purposes of the Settled Land Act, 1925. Our reasons are that on A's death the legal estate vested in C upon trust to convey the same to D as tenant for life by means of a principal vesting instrument (Settled Land Act, 1925, s. 6). Until this has been done the legal estate remains vested in C as personal representative and not as trustee. As there is no power, except in the court, to appoint an additional personal representative, the appointment of D as trustee did not

vest the legal estate in D. The procedure for the appointment of an additional Settled Land Act trustee is contained in s. 35 of that Act and s. 35 (2) of the Trustee Act, 1925, and requires, in addition to the deed of appointment, a deed of declaration, stating who are the trustees, which is supplemental to the last or only vesting instrument and also an endorsement of a memorandum of the appointment on such vesting instrument. As these requirements clearly presuppose the execution of the principal vesting instrument under s. 6 of the Settled Land Act, 1925, we doubt if any purported appointment of a new trustee would be valid if executed before the date of such vesting instrument.

## CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

### Richard Roe

Sir,—I should like to say how much I enjoy Richard Roe's writings under "Here and There" and to compliment him on the felicity with which he manages each week to turn out an article full of interest in its mere facts and written with a sense of humour and turn of phrase which are most entertaining.

His command of words and the balance and construction of each sentence remind one of Trollope at his best. The paragraphs on "Dog's Case Law" in the issue of 22nd March are masterly.

I only hope he can keep it up!  
Bolton.

LEX.

## NOTES AND NEWS

### Honours and Appointments

Alderman G. M. BARNETT, solicitor, of Rothley, Leicestershire, has been elected Lord Mayor of Leicester.

Mr. I. M. EVANS, solicitor, of Aberystwyth, has been appointed Under-Sheriff of Cardiganshire.

Mr. B. A. PAYTON, barrister-at-law, assistant Town Clerk and deputy Clerk of the Peace for Andover, has been appointed assistant prosecuting solicitor to Bradford Corporation.

Mr. WEBSTER STORR, Town Clerk of Windsor, has resigned to take up a similar post at Beckenham.

### Personal Notes

Mr. Harold King is to retire from the office of Clerk to the Somerset County Council on 31st October.

### Miscellaneous

The annual general meeting of the Bar will be held in the Middle Temple Hall on Monday, 21st April, 1952, at 3 o'clock. The Attorney-General will preside. Any member of the Bar is at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the General Council of the Bar not later than ten clear days before the day of meeting.

### DISTRIBUTION OF GERMAN ENEMY PROPERTY

The Distribution of German Enemy Property (No. 2) (Consolidated Amendment) Order, 1952 (S.I. 1952 No. 633), makes certain amendments of detail to the Distribution of German Enemy Property (No. 2) Order, 1951 (S.R. 1951 No. 1899). The original order provides for the distribution of the proceeds of German enemy property to persons who establish claims in respect of German enemy debts. The main effects of the new order are: (a) it enables claims to be made by the personal representatives of deceased British persons, irrespective of the nationality and residence of the personal representatives themselves; (b) it excludes any claims arising out of a bond, except by the owner of the bond. The new order also incorporates amendments made last November in the Distribution of German Enemy Property (No. 2) (Amendment) Order, 1951 (S.I. 1951 No. 1943), which is revoked. The order came into force on 28th March.

### THE SOLICITORS ACTS, 1932 TO 1941

On the 21st March, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of GEOFFREY THOMSON HIRST, formerly of Coalville in the County of Leicester, be struck off the Roll of Solicitors of the Supreme Court.

### COUNTY OF CAMBRIDGE DEVELOPMENT PLAN

The above development plan was on 28th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the Administrative County of Cambridge and comprises land within the City of Cambridge and the Rural Districts of Newmarket, Chesterton and South Cambridgeshire. A certified copy of the plan, as submitted for approval, may be inspected at the County Hall, Hobson Street, Cambridge, from 10 a.m. to 4 p.m., and a certified extract of the plan so far as it relates to the Rural District of Newmarket may be inspected at the Rural District Offices, Park Lane, Newmarket, at the same hours. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 15th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the County Council, the Shire Hall, Castle Hill, Cambridge, and will then be entitled to receive notice of the eventual approval of the plan.

### CHESHIRE COUNTY COUNCIL DEVELOPMENT PLAN: PART 2

The above development plan was on 25th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County of Chester and comprises land within the undermentioned districts:—

*Municipal Boroughs.*—Altrincham, Bebington, Congleton, Crewe, Dukinfield, Hyde, Macclesfield, Sale, Stalybridge.

*Urban Districts.*—Alderley Edge, Alsager, Bollington, Bowdon, Bredbury and Romiley, Cheadle and Gatley, Ellesmere Port, Hale, Hazel Grove and Bramhall, Hoylake, Knutsford, Longdendale, Lymm, Marple, Middlewich, Nantwich, Neston, Northwich, Runcorn, Sandbach, Wilmslow, Winsford, Wirral.

*Rural Districts.*—Bucklow, Chester (part), Congleton, Disley, Macclesfield (part), Nantwich, Northwich, Runcorn, Tarvin, Tintwistle (part).

A certified copy of the plan as submitted for approval has been deposited in the Common Hall at the new County Offices, Castle Drive, Chester. Certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited for public inspection at the Area Planning Offices mentioned below:—

#### Extracts deposited at the Area Planning Office

#### Relating to

- |  |   |
|--|---|
| 1. (Central Cheshire), Hartford Manor, nr. Northwich     | Middlewich U.D., Northwich U.D., Runcorn U.D., Winsford U.D., Northwich R.D., Runcorn R.D.  |
| 2. (South Cheshire), 21 Pillory Street, Nantwich         | Crewe Borough, Alsager U.D., Nantwich U.D., Sandbach U.D., Nantwich R.D.  |
| 3. (East Cheshire), 8 Jordan-gate, Macclesfield          | Congleton and Macclesfield Boroughs, Bollington U.D., Congleton R.D., Macclesfield R.D. (part).   |
| 4. (North East Cheshire), 80 Churchgate, Stockport       | Dukinfield, Hyde and Stalybridge Boroughs, Bredbury and Romiley U.D., Hazel Grove and Bramhall U.D., Longendale U.D., Marple U.D., Disley R.D., Tintwistle R.D. (part). |
| 5. (North Cheshire), 47-51 Station Buildings, Altrincham | Altrincham and Sale Boroughs, Alderley Edge U.D., Bowdon U.D., Cheadle and Gatley U.D., Hale U.D., Knutsford U.D., Lymm U.D., Wilmslow U.D., Bucklow R.D.               |

The copies or extracts so deposited may be inspected at the places mentioned above from 9.30 a.m. to 4.30 p.m. (Saturdays 9.30 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 10th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Cheshire County Council, St. John's House, Chester, and will then be entitled to receive notice of the eventual approval of the plan.

*Note.*—(a) An extract from the plan so far as it relates to the district concerned will also be available for public inspection at the office of each Borough, Urban District and Rural District Council affected in the Administrative County during their usual office hours.

(b) In the event of objections or representations being made to the Minister, copies should be sent to the Clerk of the County Council at the above address.

### COUNTY BOROUGH OF DONCASTER DEVELOPMENT PLAN

The above development plan was, on 24th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Doncaster. A certified copy of the plan, as submitted for approval, may be inspected at the office of the Borough Surveyor, Pells Close, Doncaster, from 9 a.m. to 12 noon and 2.15 p.m. to 5.15 p.m. (Saturdays 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing

to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 10th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk at 1 Priory Place, Doncaster, and will then be entitled to receive notice of the eventual approval of the plan.

#### COUNTY OF THE ISLE OF WIGHT DEVELOPMENT PLAN

The above development plan was on 26th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County of the Isle of Wight and comprises land within the undermentioned districts—

the Boroughs of Newport and Ryde ;  
the Urban Districts of Cowes, Sandown-Shanklin and Ventnor ; and  
the Rural District of the Isle of Wight.

A certified copy of the plan as submitted for approval has been deposited at the County Planning Department, Hazards House, Newport, I.O.W. Certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited for public inspection at the places mentioned below :—

Borough of Newport—  
17 Quay Street, Newport, I.O.W.

Borough of Ryde—  
5 Lind Street, Ryde, I.O.W.

Urban District of Cowes—  
Northwood House, Cowes, I.O.W.

Urban District of Sandown-Shanklin—  
Town Hall, Shanklin, I.O.W.

Urban District of Ventnor—  
Salisbury Gardens, Ventnor, I.O.W.

Rural District of the Isle of Wight—  
30 Pyle Street, Newport, I.O.W.

The copies or extracts so deposited may be inspected at the places mentioned above from 10 a.m. to 4 p.m. (Saturdays 9.30 a.m. to 11.30 a.m.). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 14th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Isle of Wight County Council and will then be entitled to receive notice of the eventual approval of the plan.

#### COUNTY BOROUGH OF WARRINGTON DEVELOPMENT PLAN

The above development plan was on 25th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Warrington. A certified copy of the plan as submitted for approval may be inspected at the Borough Surveyor's Office, Town Hall, Warrington, from 9 a.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 15th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Warrington County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

#### DEWSBURY COUNTY BOROUGH DEVELOPMENT PLAN

The above development plan was on 17th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Dewsbury. A certified copy of the plan as submitted for approval may be inspected at the Town Hall, Dewsbury, from 9 a.m. to 5.30 p.m. (Saturdays 9 a.m. to 12.30 p.m.). Any objection or representation with reference to the plan may be sent in

writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 5th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Dewsbury County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

Solicitors and executors faced with the practical problem of the disposal of testators' personal clothing are asked to remember that the W.V.S. is always in great need of clothing to meet special cases of hardship and for general emergency cases caused by flood, fire, accident, etc., in any part of the country. We are informed that any local W.V.S. office will be pleased to make arrangements for the collection of any clothing given in this way.

#### MIDDLE TEMPLE

The Masters of the Bench have awarded Blackstone Entrance Scholarships to : Mr. V. W. C. Price, the Judd School, Tonbridge, Trinity College, Cambridge, and Balliol College, Oxford; Mr. J. B. Edwards, Royal Masonic School, Bushey, and Merton College, Oxford; Mr. K. G. Routledge, Birkenhead School and Liverpool University.

#### SOCIETIES

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce a skating party at Queen's Club, Bayswater, at 6.30 p.m. on Wednesday, 9th April.

The provincial meeting of the LOCAL GOVERNMENT LEGAL SOCIETY is to be held this year at Leeds, on Saturday, 26th April, 1952. The Lord Mayor of Leeds has very kindly agreed that the morning session shall take place at the Civic Hall, Leeds, and has invited the members of the society to take coffee with him between 10.45 a.m. and 11.15 a.m. The meeting is to be addressed in the Council Chamber at 11.15 a.m. by Mr. Bernard Kenyon, the Clerk of the West Riding County Council, who has chosen as his subject "The Relations between County Councils and County Boroughs—Past and Present." The chairman of the society (Mr. F. Scott-Miller, Assistant Solicitor, London County Council) will preside. Members of the society will be the guests of the Lord Mayor at the Civic Hall for luncheon. In the afternoon arrangements are being made for the members to visit Templenewsam, a mansion belonging to the Leeds Corporation and containing many valuable works of art, where tea may be obtained. Mr. K. H. Potts, Senior Assistant Solicitor, Civic Hall, Leeds, is acting as organising secretary of the meeting.

The LAW STUDENTS' DEBATING SOCIETY announce the following debates for April, 1952, at 60 Carey Street, W.C.2 : Tuesday, 8th April (debate with the Publicity Club), "That television and the cinema spell the doom of the newspaper"; 29th April, "That the British Colonial Empire should now be wound up." (Affirmative : Mr. D. N. Pritt, Q.C.; Negative : A member of the British Empire League.)

The UNITED LAW SOCIETY announce the following programme for April, 1952. Monday, 7th April, 1952. Business : To appoint a chairman to preside at the Annual General Meeting on Monday, 26th May, 1952. Debate : "That in the opinion of this House moral degeneration is causing the downfall of Great Britain"; Monday, 28th April, 1952. Business : To elect an auditor to fill the vacancy caused by the resignation of Miss B. H. Hancock. Debate : "That the reintroduction of corporal punishment is essential for the suppression of crime."

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